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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 SALVADOR M. GONZALEZ,
12 Plaintiff,
13 v.
14 S. SHERMAN, Warden,
15 Defendant.

Case No. 15cv2419 GPC (RBB)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION
PURSUANT TO 28 U.S.C.
§ 2244(b)(3)(A) GATEKEEPER
PROVISION**

16
17 Petitioner has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.
18 § 2254, along a copy of his trust account statement, which this Court construes as a request
19 to proceed in forma pauperis. The Court does not rule on Petitioner's request to proceed in
20 forma pauperis because this case is summarily dismissed pursuant to 28 U.S.C.
21 § 2244(b)(3)(A) as indicated below.

22 **PETITION BARRED BY GATEKEEPER PROVISION**

23 The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner
24 has submitted to this Court challenging his June 15, 2007 conviction in Imperial County
25 Superior Court case number JCF18113. On October 28, 2010, Petitioner filed, in this
26 Court, a Petition for Writ of Habeas Corpus in case No. 10cv2243. In that petition,
27 Petitioner challenged his June 15, 2007 conviction as well. On August 26, 2013, this Court
28 denied the petition on the merits. (*See* Order filed Aug. 26, 2013 in case No. 10cv2243)

1 JLS (RBB) [ECF No. 31].) Petitioner appealed that determination. On September 12,
 2 2014, the Ninth Circuit Court of Appeals denied Petitioner's request for certificate of
 3 appealability. (*See* Order in *Gonzalez v. Busby*, No.13-56594 (9th Cir. Sept. 12, 2014).)

4 Petitioner is now seeking to challenge the sentence imposed as a result the conviction
 5 he challenged in his prior federal habeas petition. Unless a petitioner shows he or she has
 6 obtained an Order from the appropriate court of appeals authorizing the district court to
 7 consider a successive petition, the petition may not be filed in the district court. *See* 28
 8 U.S.C. § 2244(b)(3)(A); *see also* *Burton v. Stewart*, 549 U.S. 147, 153 (2007) (a petition
 9 is successive where it challenges "the same custody imposed by the same judgment of a
 10 state court" as a prior petition). A successive application is permissible "only if it rests on
 11 a new rule of constitutional law, facts that were previously unavailable, or facts that would
 12 be sufficient to show constitutional error in the petitioner's conviction." *Woods v. Carey*,
 13 525 F.3d 886, 888 (9th Cir. 2008). "Even if a petitioner can demonstrate that he qualifies
 14 for one of these exceptions, he must seek authorization from the court of appeals before
 15 filing his new petition with the district court." *Id.* Here, there is no indication the Ninth
 16 Circuit Court of Appeals has granted Petitioner leave to file a successive petition.¹

17 CONCLUSION

18 Because there is no indication Petitioner has obtained permission from the Ninth
 19 Circuit Court of Appeals to file a successive petition, this Court cannot consider his
 20 Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner
 21 filing a petition in this court if he obtains the necessary order from the Ninth Circuit Court

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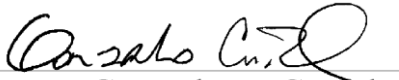
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27 ¹ In his Petition, Petitioner indicates that on October 22, 2015 he submitted a motion for leave to file a
 28 second or successive petition with the Ninth Circuit Court of Appeals. (*See* Pet. at 5, 78-81.) He has
 not, however, indicated that the request has been granted by the Court of Appeals.

1 of Appeals. For Petitioner's convenience, the Clerk of Court shall attach a blank Ninth
2 Circuit Application for Leave to File Second or Successive Petition.

3 IT IS SO ORDERED.

4 Dated: November 6, 2015


5 Hon. Gonzalo P. Curiel
6 United States District Judge
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